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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,980	12/31/2003	Peter John Mahon	11848/13	8999
23838	7590	08/30/2006	EXAMINER	
KENYON & KENYON LLP 1500 K STREET N.W. SUITE 700 WASHINGTON, DC 20005			KALAFUT, STEPHEN J	
			ART UNIT	PAPER NUMBER
			1745	

DATE MAILED: 08/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/747,980	Applicant(s) MAHON, PETER JOHN	
	Examiner Stephen J. Kalafut	Art Unit 1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 65-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 65-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>16 Dec 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 65, 66 and 72-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagai (JP 10-294,135) in view of Kaschke (US 5,898,933).

Nagai discloses a hybrid power supply that delivers pulse discharges (section 0001), and which includes a battery cell (2), a type of electrochemical device, which would provide potential between the terminals. Mounted to the outside of the housing is a flexible double layer capacitor (1), which is connected to one terminal, the battery housing, via one collecting plate (15), and the other terminal via a lead (17). Thus, the electrochemical device and the capacitor are connected in parallel. While Nagai does not use the term "supercapacitor" his term "double layer capacitor" has the same meaning. This capacitor is used to provide pulse discharge, as to accomplish the equalization of a load over time. The battery includes a sheath (4), which would be flexible packaging, as well as rigid packaging (25). As seen in drawing 9, the double layer capacitor may be wrapped around the outside of the battery. Nagai does not disclose a rigid housing for containing these electrical devices, or a cellular telephone that draws pulsed power therefrom. Kaschke discloses a cellular telephone (326) that uses a battery for normal operation (column 6, lines 23-29) and receives pulses of current from capacitors (512, 514). The telephone also includes a rigid housing (figures 2, 3A-3C) for containing all of its electronic components. Because the phone of Kaschke uses pulsed power, which is provided by the power supply of

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Nagai, and because the mechanical protection provided by the housing of Kaschke, it would be obvious to use the power supply of Nagai in the cell phone of Kaschke. Recitations of how hybrid power supply components are assembled and connected are treated under product-by-process practice, and are not accorded patentable weight, *in re Fitzgerald* 205 USPQ 594.

Claims 68-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagai in view of Kasche as applied to claims 65 and 66 above, and further in view of either Jennings *et al.* (US 5,612,675) or Bartschi *et al.* (US 5,734,976).

These claims differ from the above combination by reciting a switch that isolates at least one of the battery or the supercapacitor from a common terminal. Jennings *et al.* disclose a device that includes a battery (156) in parallel with a capacitor (C1), where the battery may be disconnected by a switch (153). Bartschi *et al.* disclose a device that includes a battery (B1) in parallel with a capacitor (C7), where the battery may be disconnected by a switch (S3). See figure 2. For either reference, the arrangement allows the battery to be disconnected when not needed (Jennings *et al.*, column 11, lines 13-17, Bartschi *et al.*, column 7, lines 29-33). For this reason, it would be obvious to use a switch as shown by either Jennings *et al.* or Bartschi *et al.* to disconnect the battery when not need, in the hybrid power source of Nagai, when used in the cellular telephone of Kasche.

Applicant's arguments with respect to claims 65-85 have been considered but are moot in view of the new ground(s) of rejection.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjk



STEPHEN J. LAFERTY
PRIMARY EXAMINER
GROUP 1700